

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL VACANCY ON GREEN-)
TAYLOR WATER DISTRICT'S BOARD OF) CASE NO. 2011-00026
COMMISSIONERS OF)

O R D E R

Taylor County Judge/Executive Eddie Rodgers has advised the Commission in writing of the existence of a vacancy on Green-Taylor Water District's ("Green-Taylor District") Board of Commissioners due to the expiration of the term of Water District Commissioner Terry Mardis. Mr. Mardis's term ended on June 30, 2010. No action was taken to fill the vacancy prior to September 28, 2010. On January 11, 2011, the members of Taylor County Fiscal Court unanimously voted for the reappointment of Mr. Mardis.

KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding the provisions of KRS 67.710, a vacancy resulting from the expiration of a term shall be filled by the Public Service Commission if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

As the position has been vacant for more than 90 days, the Commission has the statutory duty and the exclusive authority to fill it. While a county judge/executive and a county fiscal court may reach agreement on the vacant position, they lack authority to fill the vacancy once it has remained unfilled for more than 90 days. Any action on their

part to appoint and approve a candidate at that time has limited legal effect and constitutes only a recommendation to the Commission.¹

The Commission recognizes that deference should be accorded to local elected officials when filling vacancies on a water district's board of commissioners. We have previously declared:

While the Commission has exclusive authority to fill vacancies that exist for 90 days or more, we will defer to the local elected officials in those instances where the local appointing and approval authorities have reached agreement on a candidate. Absent unusual circumstances that raise clear concerns about an agreed candidate's qualifications, such deference is appropriate because local officials generally have a better understanding of the candidates' qualifications and of the water district's needs and because these officials are directly accountable to the water district's customers through the ballot box.²

Accordingly, the Commission finds that a proceeding should be initiated to determine whether Mr. Mardis should be reappointed. We will limit the scope of our review to determining whether Mr. Mardis meets the constitutional and statutory requirements for the office of water district commissioner.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to fill the vacancy on Green-Taylor District's Board of Commissioners that was created through the expiration of the term of Terry Mardis.
2. Green-Taylor District, Taylor County Judge/Executive Rodgers, Taylor County Fiscal Court, and Terry Mardis are made parties to this proceeding.

¹ See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009).

² Case No. 2007-00493, *Request for Assistance in Appointment of Breathitt County Water District Commissioners* (Ky. PSC Mar. 20, 2008) at 4-5.

3. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.

4. Service of any document or pleading shall be made in accordance with 807 KAR 5:001, Section 3(7).

5. Terry Mardis shall file with the Commission the original and two copies of the information listed in Appendix A. Mr. Mardis's failure to file the requested information in a timely manner shall be considered as notice that he does not wish to be considered for reappointment to Green-Taylor District's Board of Commissioners.

6. Green-Taylor District shall file with the Commission the original and two copies of the information listed in Appendix B.

7. a. The information requested herein is due on or before March 14, 2011. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record and ten copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

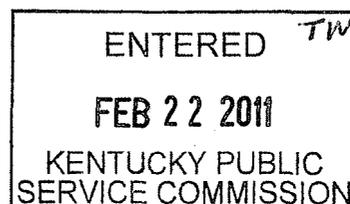
c. A party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

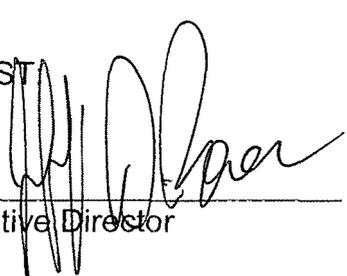
e. Careful attention shall be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations.

8. The record of Case No. 2010-00446³ is incorporated by reference into the record of this proceeding.

By the Commission



ATTEST



Executive Director

³ Case No. 2010-00446, *Request to Fill Vacancies on the Board of Commissioners of Green-Taylor Water District* (Ky. PSC initiated Nov. 23, 2010).

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2011-00026 DATED FEB 22 2011

1. Provide your resume or curriculum vitae.
2. State your date of birth.
3. State your current street address and your current mailing address (if different from your street address).
4. State whether you have ever been convicted of violating any law (other than minor traffic offenses). If yes, list the conviction, the court that adjudged the sentence, and date and place.
5. State whether you reside in Green-Taylor District's territory.
6. State whether you have fought a duel with deadly weapons or sent or accepted a challenge to fight a duel with deadly weapons, acted as second in carrying a challenge, or aided or assisted any person doing so.
7. State whether you are a customer of Green-Taylor District.
8. Describe your educational background.
9. List all positions that you currently hold with any local, state, or federal governmental entity.
10.
 - a. List all non-governmental organizations and non-profit corporations for which you serve as an officer.
 - b. For each organization and corporation listed, state whether the organization or corporation transacts business with Green-Taylor District.
11. List all contracts that you have ever entered into with Green-Taylor District to provide goods or services. Provide a copy of each contract.

12. List all business transactions that you have had with Green-Taylor District in a personal or non-official capacity.

13. List all family members that Green-Taylor District currently employs and the position that each family member holds. State the date on which each family member began his or her employment with Green-Taylor District.

14. List all family members that Green-Taylor District has previously employed and the position that each family member held. State the dates on which each family member began and ended his or her employment with Green-Taylor District.

15. List all courses of water district management training that you have attended since January 1, 2001.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2011-00026 DATED **FEB 22 2011**

1. Provide all correspondence with the Green County Judge/Executive regarding the expiration of Terry Mardis's term of office on the Green-Taylor District Board of Commissioners.

2. List all contracts that Terry Mardis has entered into with Green-Taylor District to provide goods or services. Provide a copy of each contract and the minutes of the meeting of the Green-Taylor District Board of Commissioners at which the contract was approved.

3. List all of Mr. Mardis's family members that Green-Taylor District currently employs and the position that each family member holds. State the date on which each family member began his or her employment with Green-Taylor District.

4. List all of Mr. Mardis's family members that Green-Taylor District has previously employed and the position that each family member held. State the dates on which each family member began and ended his or her employment with Green-Taylor District.

5. State the number of meetings of Green-Taylor District's Board of Commissioners has held since January 1, 2008 and the number of those meetings that Mr. Mardis failed to attend.

Eddie Rogers
Taylor County Judge Executive
Office of the Judge/Executive
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